

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

US EPA RECORDS CENTER REGION 5



515596

UNITED STATES OF AMERICA,

Plaintiff,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

COMPLAINT

INTRODUCTION AND NATURE OF THE CASE

1. This is a civil action brought by the United States of America on behalf of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") to repair the harm caused, and prevent the future harm posed, by pollution of the ground and waters in and around the City of St. Louis Park, Minnesota. The activities of the defendant Reilly Tar and Chemical Corporation ("Reilly Tar") have resulted in the disposal, leaching, and migration of hazardous and other chemical wastes into the ground and waters of the City of St. Louis Park with substantial adverse effects at present and potentially more adverse effects in the future. This action seeks a judgment that the handling, storage, treatment and disposal of hazardous and other chemical wastes by the defendant Reilly Tar is presenting an imminent and substantial endangerment to health and the environment, within the meaning of Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §6973. Plaintiff seeks injunctive relief including remedial measures.

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1331, 28 U.S.C. §1345, and 42 U.S.C. §6973.

3. Venue is proper in this District, pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §6973, because the claim arose in this District.

4. Notice of commencement of this action has been given to the State of Minnesota pursuant to 42 U.S.C. §6973.

THE ACTIVITIES OF THE DEFENDANTS
IN ST. LOUIS PARK, MINNESOTA

5. Defendant Reilly Tar, formerly known as Republic Creosoting Company, is incorporated under the laws of the State of Indiana and is headquartered at 1510 Market Square Center, 151 North Delaware Street, Indianapolis, Indiana.

6. In 1917, defendant Reilly Tar began operation of a plant at a site in St. Louis Park, Minnesota ("Reilly Tar site"). At the plant, defendant Reilly Tar, among other activities, refined coal tar into creosote oil and other products and treated wood products with creosote oil and other materials as preservatives.

7. The activities of Reilly Tar at the Reilly Tar site, including the refining of coal tar and the treatment of wood products, generated chemical wastes. For 55 years, Reilly Tar handled, stored, treated and disposed of these chemical wastes at the Reilly Tar site.

8. Reilly Tar ceased the distillation of coal tar into creosote oil and other products at the Reilly Tar site in 1971. It ceased the treatment of wood products in 1972.

9. In June, 1973, the City of St. Louis Park purchased the Reilly Tar site and transferred its ownership, by quitclaim deed, to the defendant Housing and Redevelopment Authority of St. Louis Park, a municipal corporation existing under the laws of the State of Minnesota.

10. Defendant Oak Park Village Associates, a limited partnership existing under the laws of the State of Minnesota, bought part of the Reilly Tar site in January, 1978. Defendant Rustic Oaks Condominium, Inc., incorporated under the laws of the State of Minnesota, bought part of the Reilly Tar site in June, 1978 and May, 1979. Defendant Philip's Investment Co. bought part of the Reilly Tar site in January, 1980. Defendant Housing and Redevelopment Authority of St. Louis Park still owns part of the Reilly Tar site. The defendants named in this paragraph are named as defendants only to insure that the remedial measures sought by the plaintiff can be fully implemented.

11. In 1970, the State of Minnesota and the City of St. Louis Park sued Reilly Tar in state court for violations of state law at the Reilly Tar site relating to air and surface water pollution. The complaint was amended by the State of Minnesota in 1978 to allege pollution of the groundwater, and the state suit is still pending.

THE ENDANGERMENT TO HEALTH
AND THE ENVIRONMENT CREATED BY
THE ACTIVITIES OF REILLY TAR

12. Chemical wastes resulting from the refining of coal tar into creosote oil and other products and from the treatment of wood products with creosote oil and other materials consist of many chemicals which usually are part of three distinct groups: neutral oils, tar acids, and tar bases. Neutral oils include polynuclear aromatic hydrocarbons ("PAH") compounds such as

fluoranthene, acenaphthene, phenanthrene, pyrene, and chrysene.

Tar acids consist of phenolic compounds such as phenol, cresols, xylenols and naphthols. Tar bases consist of basic nitrogen compounds such as pyridines, acridines, quinolines, and naphthylamines.

13. Creosote oil is a demonstrated human and animal carcinogen. It is absorbed from the intestinal tract on ingestion and through the skin. Acute exposure may produce vomiting, respiratory difficulties, headache, vertigo, and convulsions. Exposure to high concentrations causes hypertension and cardiovascular collapse resulting in death.

14. Many PAH compounds found in wastes resulting from the refining of creosote oil and other products from coal tar and from the treatment of wood products with creosote oil and other materials are carcinogens, tumor-initiators or tumor-promoters. Chronic exposure to PAH compounds has been shown to cause cancer in humans. In addition, interaction among various PAH compounds may result in an enhancement of their carcinogenic and toxic effects. Also, some PAH compounds are co-carcinogens, substances which enhance the carcinogenic activity of cancer-causing substances.

15. Phenolic compounds found in the tar acids of wastes resulting from the refining of creosote oil and other products from coal tar and from the treatment of wood products with creosote oil and other materials are toxic. Ingestion may cause nausea, vomiting, paralysis, convulsions, coma, and death. Kidney, liver, lung and brain functions are impaired upon prolonged exposure to phenolic compounds. Phenol is a co-carcinogen.

16. Chemical wastes generated at the Reilly Tar site spilled, leaked and were discharged directly by Reilly Tar onto and into the ground at the site.

17. Chemicals which are part of the chemical wastes generated by the refining of coal tar into creosote oil and

other products and the treatment of wood products with creosote oil and other materials exist at present in the ground at and surrounding the Reilly Tar site.

18. The chemicals in the ground at and surrounding the Reilly Tar site have leached and migrated and will continue to leach and migrate into the groundwater beneath and surrounding the Reilly Tar site.

19. The groundwater beneath and surrounding the Reilly Tar site is part of a system of several aquifers which supplies water to the City of St. Louis Park and other parts of the Minneapolis - St. Paul metropolitan area. Numerous industrial and drinking water wells have been drilled into the aquifers. Some wells offer a route for further migration of chemicals between the aquifers because of inadequate grouting and well-casings. One well, drilled to a depth of 909 feet beneath the Reilly Tar site, is plugged with coal tar at a depth of approximately 590 feet.

20. The City of St. Louis Park, as well as other municipalities, obtain drinking water for their residents from the system of aquifers extending beneath the Reilly Tar site. The City of St. Louis Park closed five drinking water wells in 1978 and 1979 because the water in the wells was contaminated with chemicals which are part of the chemical wastes generated by the refining of coal tar into creosote oil and other products and the treatment of wood products with creosote oil and other materials.

21. Chemicals which are part of the chemical wastes generated by the refining of coal tar into creosote oil and other products and the treatment of wood products with creosote oil and other materials have contaminated the groundwater in

one aquifer at least two miles to the north of the Reilly Tar site, and at least one and one-half miles to the east and southeast of the site.

22. The chemicals will continue to move, through leaching and migration of groundwater, from the Reilly Tar site, through the aquifers, and into the drinking water supply for the Minneapolis - St. Paul metropolitan area unless measures are taken to prevent it.

CLAIM FOR RELIEF

23. Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §6973, provides as follows:

Notwithstanding any other provision of this Act, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit.

24. Hazardous waste is defined in Section 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. §6903(5), as follows:

The term 'hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristic may --

- A. cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illnesses, or
- B. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

25. The chemical wastes disposed of upon and into the ground on the Reilly Tar site are hazardous waste as defined in Section 1004(5) of the Act.

26. Disposal is defined in Section 1004(3) of the Resource Conservation and Recovery Act, 42 U.S.C. §6903(3), as follows:

The term 'disposal' means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

27. The discharge, deposit, dumping, spilling, leaking and placing of hazardous waste upon and into the ground and water on and beneath the Reilly Tar site constitutes disposal as defined in Section 1004(3) of the Act.

28. The defendants have contributed and are contributing to such disposal.

29. Reilly Tar's past handling, storage, and treatment of hazardous waste and the past and present disposal of hazardous waste upon and into the ground and water on and beneath the Reilly Tar site are presenting an imminent and substantial endangerment to health and the environment and are causing a public nuisance.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiff, the United States of America, prays that this Court:

1. Enjoin the defendants from allowing, suffering, or causing the disposal of any hazardous waste upon or into the ground on the defendants' property or into the groundwater and aquifers under and surrounding the defendants' property at the Reilly Tar site;

2. Enjoin the defendants from altering any areas on the Reilly Tar site which are contaminated with hazardous wastes without the approval of the Court;

3. Order the defendants to permit the plaintiff, through its authorized agents, to enter and inspect the Reilly Tar site, to take samples, to install wells, and to undertake any other activity related to the clean-up of hazardous wastes from the site;

4. Order the defendant Reilly Tar and Chemical Corporation to prevent the further spread in the groundwater and aquifers of hazardous wastes from the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with EPA:

- a. install and operate a system of gradient control or barrier wells which includes treatment with appropriate chemical technology of the groundwaters extracted from the wells;
- b. locate, inspect, clean, properly abandon, and monitor existing wells which may facilitate the spread of hazardous wastes from the Reilly Tar site; and
- c. clean out the material plugging the 909-foot deep well on the Reilly Tar site and properly dispose of the material;
- d. develop a well-field management plan for, and monitor and verify with progress reports filed with Court and EPA, the accomplishment of all measures identified in the court-approved plan;

5. Order the defendant Reilly Tar and Chemical Corporation to repair and clean up the pollution caused by its handling, storage, treatment, and disposal of hazardous wastes at the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with EPA:

- a. determine the nature and extent of contamination by hazardous wastes of the soil on, in, beneath, and immediately surrounding the Reilly Tar site;
- b. remove, neutralize, or isolate all hazardous wastes and contaminated soil on, in, beneath, and immediately surrounding the Reilly Tar site in order to eliminate further leaching and migration of hazardous wastes into the groundwater and aquifers;
- c. remove hazardous wastes from the Reilly Tar site from the groundwater and aquifers;
- d. insure the proper collection, disposal, and/or treatment of any hazardous wastes, contaminated soil, or contaminated groundwater removed from the environment as a result of the implementation of the measures required by subparagraphs b and c; and
- e. monitor and verify with progress reports filed with the Court and EPA the accomplishment of the measures required in subparagraphs a through d;

6. Order the defendant Reilly Tar and Chemical Corporation to finance all monitoring and maintenance necessary to verify the containment and clean-up of hazardous wastes from the Reilly Tar site.

7. Order the defendant Reilly Tar and Chemical Corporation to finance the restoration of closed drinking water wells in the City of St. Louis Park which have been contaminated with hazardous wastes from the Reilly Tar site and/or to finance the aquisition and development of alternate sources of water;

8. Order the defendant Reilly Tar and Chemical Corporation to pay the plaintiff its costs incurred in taking samples, installing monitoring wells, and otherwise identifying, quantifying, and locating hazardous wastes on and migrating from the Reilly Tar site;

9. Order the defendant Reilly Tar and Chemical Corporation to post a performance bond for the accomplishment of all remedial measures, the amount of which will be determined in later proceedings;

10. Award plaintiff the costs of this suit and such other relief as this Court deems just and appropriate.

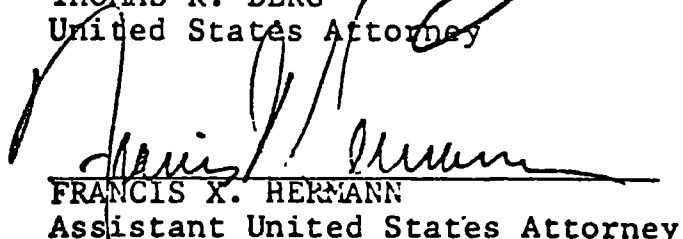
Respectfully submitted this 3rd day
of September, 1980.



ANGUS MACBETH
Acting Assistant Attorney General



THOMAS K. BERG
United States Attorney



FRANCIS X. HERMANN
Assistant United States Attorney